

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Darryl Durr,

Plaintiff,

v.

Ohio Attorney General Richard Cordray, *et al.*,

Defendants.

Case No.

2 : 10 cv 0312

Judge

JUDGE SMITH

MAGistrate Judge Smith

PLAINTIFF'S MOTION FOR A  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION

Plaintiff Darryl Durr moves for the issuance of a temporary restraining order, and subsequently a preliminary injunction pursuant to Federal Rules of Civil Procedure 65 against Defendants Attorney General Richard Cordray, Governor Ted Strickland, Cuyahoga County Prosecutor Bill Mason and Custodian of Records Gerald Fuerst, which order would, minimally, provide:

(1) That the State of Ohio be restrained and enjoined from proceeding with Plaintiff's execution currently scheduled for April 20, 2010 and the execution be stayed until such time as this Court has an opportunity to review the constitutional and procedural claims set forth in Plaintiff's Complaint and Memorandum of Law filed concurrently herewith.

(2) That Bill Mason, the Prosecuting Attorney for Cuyahoga County and Gerald Fuerst, Custodian of Records and Evidence for Cuyahoga County be required to provide to Plaintiff or make available for independent DNA examination and testing the necklace secured

by law enforcement officials at the crime scene and which, allegedly, belonged to the late Angel Vincent ..

(3) That Ohio Revised Code § 2953.73(E)(1) be declared to be unconstitutional as applied to Plaintiff.

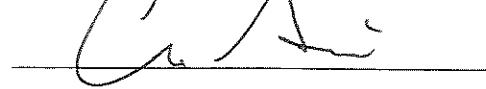
Plaintiff submits that the State of Ohio has scheduled his execution for April 20, 2010 for a crime that he has consistently denied committing. Plaintiff further submits that unless the State of Ohio is restrained and enjoined from proceeding with Plaintiff's scheduled execution and the Prosecuting Attorney and custodian of records are not required to provide the specific items of evidence in their possession that may exonerate him, he will suffer immediate, permanent and irreparable loss, damage and harm in the form of an execution for which he has no adequate remedy at law. Plaintiff further submits that despite his requests, Bill Mason, the Prosecuting Attorney for Cuyahoga County and Gerald Fuerst, the Cuyahoga County Custodian of Evidence have denied him access to the necklace that allegedly belonged to the victim for which he was convicted of killing and which may provide evidence of his innocence. Plaintiff further submits that unless the Prosecuting Attorney and the Custodian of Evidence are required to provide to him the necklace for independent testing, he will suffer immediate, permanent and irreparable harm for which he has no adequate remedy at law. Finally, Plaintiff submits that the relief requested is necessary to prevent the loss of his life and the continued application of a state statute that violates the Eighth and Fourteenth Amendments to the United States Constitution..

The bases for this motion for temporary restraining order and preliminary injunction are set forth in Plaintiff's Memorandum in Support for Temporary Restraining Order, which is attached hereto and incorporated herein by reference. A copy of a Proposed Order Granting

Plaintiff's Motion for Temporary Restraining Order is attached hereto for the Court's convenience.

Dated: April 13, 2010

Respectfully submitted,



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*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on the following by personal service on the 13th day of April, 2010.

Ohio Attorney General Richard Cordray  
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Columbus, OH 43215

Governor Ted Strickland  
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77 South High Street  
Columbus, OH 43215-6108

William Mason,  
Cuyahoga County Prosecutor  
1200 Ontario Street  
Justice Center Bldg. Floor 8<sup>th</sup> and 9<sup>th</sup>  
Cleveland, OH 44113-1678

Gerald E. Fuerst, Clerk of Court  
Custodian of Records  
Cuyahoga County Common Pleas Court  
And Eighth District Court of Appeals  
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